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WRITTEN  
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PRESENTATION

May 22, 1997

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the  
Telecommunications Act of 1996; CC Docket No. 96-98; FCC 96-325

Dear Mr. Caton:

The Public Utility Commission of Texas ("PUCT") submits the following ex parte  
response to certain reply comments filed in the above-referenced proceeding.

On February 7, 1997, the Commission released its Report and Order in *In the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-237 ("Infrastructure Sharing Order"). In the Infrastructure Sharing Order the Commission adopted certain final rules applicable to incumbent LECs providing certain "public switched network infrastructure, technology, information, and telecommunications facilities and functions" to "qualifying carriers" as that term is defined in 47 U.S.C. § 259(d). 47 U.S.C. § 259. In its Order the Commission concluded that an incumbent LEC is obligated to obtain any licenses from third parties whenever such licenses are the only means by which a qualifying carrier may receive information and services pursuant to 47 U.S.C. § 259. (Infrastructure Sharing Order, p. 35, paras. 69 and 70).

MCI, AT&T Corp., and LCI International Telecom Corp. suggest that the Commission should follow this same approach in this proceeding. They contend that the Commission should impose an obligation on incumbent LECs to obtain any third-party licenses necessary to allow new entrants access to the incumbent LEC's unbundled network elements. If the Commission chooses to adopt this approach in this proceeding, it does not follow that the PUCT's decision in the Texas arbitration proceeding involving Southwestern Bell Telephone Company ("SWBT") and AT&T Communications of the Southwest, Inc., ("AT&T") should be preempted or declared invalid or incorrect.

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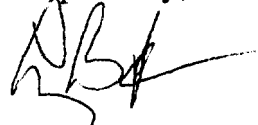
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In making its arbitration decision, the PUCT was required to determine whether the proposed interconnection agreement between the parties complied with 47 U.S.C. §§ 251 and 252(d) and any regulations of this Commission adopted pursuant to § 251. 47 U.S.C. § 252(e)(2)(B). As discussed in the PUCT's earlier comments, the PUCT made its arbitration decision and imposed an obligation on AT&T as the new entrant to obtain any necessary license or right-to-use agreements but further required SWBT as the incumbent LEC to assist AT&T in this regard. When the PUCT made this determination, this Commission had not adopted regulations pursuant to § 251 addressing the intellectual property rights issue. Accordingly, the PUCT's determination did not violate any Commission rule. Moreover, neither § 251 nor § 252(d) expressly require that incumbent LECs -- as opposed to new entrants -- obtain any necessary license or right-to-use agreements from third parties.

Of equal importance, the interconnection agreement approved by the PUCT contains an "Intervening Law" provision. A copy of this provision is attached as Exhibit "A." The PUCT approved this provision in recognition that this Commission would continue the process of interpreting the 1996 Telecommunications Act and adopting regulations that might alter the obligations and responsibilities of both incumbent LECs and new entrants. Under that provision SWBT and AT&T are mutually obligated to modify their agreement to maintain consistency with this Commission's rules. Accordingly, although the PUCT, like other commenters, continues to believe that this Commission should adopt the approach of the PUCT, if this Commission decides to adopt a different approach, the respective duties and obligations of SWBT and AT&T will be altered to comply with this Commission's new determination.

For these reasons, this Commission should decline the invitation to preempt the PUCT's arbitration determination.

Respectfully,



Liz Bills  
Assistant Attorney General  
Natural Resources Division  
(512) 463-2012; (512) 320-0911 (Telecopier)

cc: Kalpak Gude

- 1.5 This Agreement includes and incorporates herein the Attachments listed in Section 60 of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- 1.6 Unless otherwise provided in the Agreement, SWBT will perform all of its obligations concerning its offering of Resale services and unbundled Network Elements under this Agreement throughout the entire service area where SWBT is the incumbent local exchange carrier; provided, that SWBT's obligations to provide Ancillary Functions or to meet other requirements of the Act covered by this Agreement are not necessarily limited to such service areas.

**2.0 Effective Date**

- 2.1 This Agreement becomes effective (1) when executed by each Party and approved by the State Commission; or (2) by operation of law pursuant to the Order of the State Commission, whichever is earlier.

**3.0 Intervening Law**

- 3.1 This Agreement is entered into as a result of both private negotiation between the Parties and arbitration by the Public Utility Commission of Texas (PUC), acting pursuant to FTA96, PURA95, and the PUC's Substantive Rules. If the actions of Texas or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis for a provision of the contract required by the Arbitration Award approved by the PUC, the affected provision will be invalidated, modified, or stayed as required by action of the legislative body, court, or regulatory agency. In such event, the Parties will expend diligent efforts to arrive at an agreement respecting the modifications to the Agreement required. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions will be resolved pursuant to the dispute resolution process provided for in this Agreement. The invalidation, stay, or modification of the pricing provisions of the FCC's First Report and Order in CC Docket No.96-98 (August 8, 1996) and the FCC's Order on Reconsideration (September 27, 1996) will not be considered an invalidation, stay, or modification requiring changes to provisions of the Agreement required by the PUC Arbitration Award, in that the FCC's pricing provisions are not the basis for the costing and pricing provisions of the PUC's Arbitration Award.
- 3.2 In the event a court or regulatory agency of competent jurisdiction should determine that modifications of this Agreement are required to bring the services being provided hereunder into compliance with the Act, the affected Party will promptly give the other Party written notice of the modifications deemed required. Upon delivery of such notice, the Parties will expend diligent efforts to arrive at an agreement respecting such modifications required, and if the Parties are unable to arrive at such agreement within

sixty (60) days after such notice, either Party may invoke the Dispute Resolution process set forth in Section 9.4.2 of this Agreement.

**4.0 Term of Agreement**

- 4.1 This Agreement will become effective as of the Effective Date stated above, and will expire after a three (3) year initial term plus two one year extensions, unless written Notice of Non Renewal and Request for Negotiation (Non Renewal Notice) is provided by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day this Agreement would otherwise renew for an additional year. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations.
- 4.2 The same terms, conditions, and prices will continue in effect, on a month-to-month basis as were in effect at the end of the latest term, or renewal, so long as negotiations are continuing without impasse and then until resolution pursuant to this Section. The Parties agree to resolve any impasse by submission of the disputed matters to the Texas PUC for arbitration. Should the PUC decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.
- 4.3 Upon termination of this Agreement, AT&T's liability will be limited to payment of the amounts due for Network Elements, Combinations and Resale Services provided up to and including the date of termination and thereafter as reasonably requested by AT&T to prevent service interruption, but not to exceed one (1) year. The Network Elements, Combinations and Resale services provided hereunder are vital to AT&T and must be continued without interruption. When AT&T provides or retains another vendor to provide such comparable Network Elements, Combinations or Resale services, SWBT and AT&T agree to co-operate in an orderly and efficient transition to AT&T or another vendor. SWBT and AT&T further agree to coordinate the orderly transition to AT&T or another vendor such that the level and quality of the Network Elements, Combinations and Resale Services is not degraded and each Party will exercise its best efforts to effect an orderly and efficient transition.

**5. Assignment**

- 5.1 Neither Party hereto may assign or otherwise transfer its rights or obligations under this Agreement, except with the prior written consent of the other Party hereto, which consent will not be unreasonably withheld; provided, that SWBT may assign its rights and delegate its benefits and delegate its duties and obligations under this Agreement without the consent of AT&T to a 100 per cent owned affiliate of SWBT, provided the